IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	
	)	
JAMES MITCHELL OWEN	)	
and	)	01-CV-4313-JPG
KAREN-LYN OWEN,	)	
	)	Arising from an Appeal from
Debtors / Appellants.	)	The Honorable Kenneth J. Meyers
	)	
v.	)	BR # 01-41571
	)	In Proceedings Under Chapter 7
MICHELLE VIEIRA, Chapter 7	)	
Trustee,	)	
	)	
Trustee / Appellee.	)	

ORDER

GILBERT, District Judge:

This matter comes before the Court on the appeal of the Debtors / Appellants from a decision of the Bankruptcy Court, Judge Kenneth J. Meyers. The Appellants have submitted a brief in support of their appeal, and the Chapter 7 Trustee ("the Trustee") has responded. The Court has heard oral arguments. For the reasons stated below, this Court affirms the decision of the Bankruptcy Court.

I. BACKGROUND

Karen Lyn Owen was injured in an automobile accident in September 2000. Mrs. Owen sued the other driver involved in the accident to recover for her injuries proximately caused by the accident. Mrs. Owen's husband, James Mitchell Owen, joined in the action to recover damages for an alleged loss of consortium. The Owens ultimately settled the case for some

amount in excess of $20,000.00.

On July 17, 2001, Mr. and Mrs. Owen (hereinafter "the Debtors") filed a petition pursuant to Chapter 7 of the Bankruptcy Code. The Debtors listed as an asset of their estate the proceeds of the lawsuit arising out of the September 2000 automobile accident. Regarding those proceeds, the Debtors claimed an exemption of $3,654.00 under the Illinois "wild card" exemption provision. *See* 735 ILCS 5/12-1001(b).[1] They also claimed an exemption under the Illinois personal bodily injury exemption provision, which provides, in part, as follows:

> The following personal property, owned by the debtor, is exempt from judgment, attachment, or distress for rent:
>
> . . .
>
> (h)(4) a payment not to exceed $7,500 in value, on account of personal bodily injury of the debtor or an individual of whom the debtor was a dependent.

735 ILCS 5/12-1001.

The Trustee did not object to the application of the claimed wild card exemption. The Trustee did not dispute that the Debtors were entitled to a $7,500.00 exemption under §12-1001(h)(4). The Debtors, however, claimed a $15,000.00 exemption under §12-1001(h)(4)—$7,500.00 for Mrs. Owen and $7,500.00 for Mr. Owen. The Trustee objected to the application of § 12-1001(h)(4) to the $7,500.00 attributable to Mr. Owen's loss of consortium claim.

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[1] Under the Bankruptcy Code, a debtor may choose either the federal or state exemptions unless a state chooses to "opt out" of the federal exemption scheme. *See* 11 U.S.C. § 522(b)(1). Illinois has opted out. 735 ILCS 5/12-1201. Thus, Illinois debtors must rely on the exemptions provided by Illinois law. *In re Ball*, 201 B.R. 204, 206 (Bankr.N.D.Ill. 1996).

II. THE PARTIES' POSITIONS

The Trustee argues that Mr. Owen's claim for loss of consortium does not fall within the scope of § 12-1001(h)(4). Specifically, the Trustee argues that if the phrase "personal bodily injury of the debtor" is given its plain meaning, it does not encompass a claim for loss of consortium.

The Debtors rely on the case of *In the Matter of Lynn*, 13 B.R. 361 (Bankr.W.D.Wis. 1981). In *Lynn*, the issue was whether the debtors, a husband and wife, were entitled to an exemption for the proceeds of a loss of consortium claim. *Lynn*, 13 B.R. at 362. In *Lynn*, the relevant federal provision set out an exemption for "a payment . . . on account of personal bodily injury . . . of the debtor or an individual of whom the debtor is a dependent." *Id*. The *Lynn* Court concluded that, under Wisconsin law, an award for loss of consortium is "on account of" the spouse's personal bodily injury. *Id*. at 363. The *Lynn* Court then held that the loss of consortium award could be exempted under the relevant federal exemption provision. *Id*.

The Appellants also suggested at oral arguments that loss of consortium qualifies as a personal bodily injury.

Finally, the Appellants note the general rule that ambiguous exemption provisions should be construed in favor of the debtor. *See In re Barker*, 768 F.2d 191, 196 (7th Cir. 1985) (stating that "where an exemption statute might be interpreted either favorably or unfavorably vis-a-vis a debtor, we should interpret the statute in a manner that favors the debtor").

III. DISCUSSION

The only issue before this Court is whether the proceeds of Mr. Owen's loss of consortium claim can be exempted pursuant to § 12-1001(h)(4).

Judge Meyers concluded that the proceeds of Mr. Owen's loss of consortium claim were not paid "on account of" Mr. Owen's "personal bodily injury," and, therefore, held that the proceeds could not be exempted under § 12-1001(h)(4). This Court reviews *de novo* the Bankruptcy Court's conclusions of law. *In Re Birkenstock*, 87 F.3d 947 (7th Cir. 1996).

At the outset, this Court notes that the Bankruptcy Courts for the Northern and Central Districts of Illinois have recently addressed this precise issue and both have concluded that an award for loss of consortium can be exempted under § 12-1001(h)(4). *See In re Chapman*, 223 B.R. 137, 140-41 (Bankr. N.D.Ill. 1998) (stating, in *dicta*, that loss of consortium resulting in the "deprivation of the benefits of sexual relations" is "clearly a bodily injury"); *In re Dealey*, 204 B.R. 17, 18 (Bankr. C.D.Ill. 1997) (holding that debtors' claim for loss of consortium was exempt pursuant to § 12-1001(h)(4)).[2]

This Court is also aware that federal bankruptcy courts sitting in other states have allowed loss of consortium awards to be exempted pursuant to exemption statutes similar to § 12-1001(h)(4), each requiring a "personal bodily injury." *See In re Young*, 93 B.R. 590, 594-95 (Bankr. S.D. Ohio 1988) (interpreting Ohio law); *In re Loyd*, 86 B.R. 663, 664 (Bankr. W.D. Okl. 1988) (interpreting Oklahoma law); *In re Lynn*, 13 B.R. 361, 363 (Bankr.W.D.Wis.1981) (interpreting federal law).

Nevertheless, none of the decisions cited above are binding authority upon this Court. The parties have not cited and this Court has not discovered any Illinois case or Seventh Circuit case deciding whether the phrase "personal bodily injury" in § 12-1001(h)(4) encompasses loss of consortium. Thus, this Court will now take a fresh look at that question.

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[2] Neither party discovered these two cases.

The primary goal of statutory construction is to ascertain and effectuate the legislature's intent. *See In re Barker*, 768 F.2d 191, 194 (7th Cir. 1985). To find that intent, the appropriate place to begin the analysis is with the text itself, "which is the most reliable indicator of [legislative] intent." *Visiting Nurses Ass'n of Southwestern Indiana, Inc. v. Shalala*, 213 F.3d 352, 355 (7th Cir. 2000) "Absent a clearly expressed legislative intent to the contrary, the statutory language must be regarded as conclusive." *Abbot v. Village of Winthrop Harbor*, 205 F.3d 976, 980 (7th Cir. 2000). "Judges must not manufacture ambiguity or disregard straightforward language." *Board of Trustees, Sheet Metal Workers' Nat. Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031, 1035 (7th Cir. 2000).

A. The Meaning of "Personal Bodily Injury"

The statute at issue does not define "personal bodily injury." In the absence of statutory definitions indicating a different legislative intent, Illinois Courts give words in Illinois statutes their ordinary and popularly understood meaning. *People ex rel. Daley v. Datacom Sys. Corp.*, 146 Ill.2d 1, 15, 585 N.E.2d 51, 57 (1991). To ascertain the ordinary and popular meaning of words, the Illinois Supreme Court has used the dictionary as a resource. *Id.* (using Black's Law Dictionary).

Black's does not define the phrase "personal bodily injury." The phrase personal injury is defined broadly, to include the following:

> 1. In a negligence action, any harm caused to a person, such as a broken bone, a cut, or a bruise; bodily injury. 2. Any invasion of a personal right, including mental suffering and false imprisonment. 3. For purposes of workers' compensation, any harm (including a worsened preexisting condition) that arises in the scope of employment.

Black's Law Dictionary 790, 7th Ed. (1999). Thus, if § 12-1001(h)(4) contained only the phrase

personal injury it would be ambiguous; "personal injury" can mean a physical bodily injury or a personal intangible injury. In this case, however, the relevant phrase is "personal *bodily* injury."

Either this Court must pretend that the word "bodily" does not appear in § 12-1001(h)(4) or the Court must treat "bodily" as a modifier or qualifier of the word "injury." In ordinary common usage, if an adjective (such as bodily) appears in front of a noun (such as injury), the adjective is understood to be a modifier or qualifier of the noun. Thus, this Court will assume that the insertion of the word "bodily" is not mere surplusage but, rather, is a reference to some special type of injury.

Black's defines "bodily injury," as follows: "Physical damage to a person's body." *Id.* at 769. Thus, while the word "injury" or the phrase "personal injury" might be commonly understood to encompass all sorts of intangible injuries, the insertion of the word "bodily" would commonly be understood to narrow the meaning of the phrase to include only damage to a person's body. The fact that the phrase "personal injury" might be ambiguous does not mean that the phrase "personal bodily injury" is ambiguous. The job of adverbs and adjectives is to increase specificity and eliminate ambiguity. The fact that the statute would be ambiguous if it contained only the phrase "personal injury" is irrelevant, because the statute actually contains the phrase "personal bodily injury."

This Court will not create ambiguity by ignoring the word "bodily." Thus, this Court agrees with Judge Meyers and concludes that the phrase "personal bodily injury" is unambiguous and means physical damage to a person. The proceeds of Mr. Owen's loss of consortium award were not compensation for physical damage to his person. Therefore, he is not entitled to exempt those proceeds.

In *In re Chapman*, 223 B.R. 137, 141 (N.D.Ill. 1998), in *dicta*, Judge Squires stated that loss of consortium is a personal bodily injury because "the deprivation of the physical benefits of sexual relations" . . . is "clearly a bodily injury." Respectfully, this Court disagrees. The actual issue in *Chapman* was whether a debtor could exempt, pursuant to § 12-1001(h)(4), a damages award for mental distress, humiliation, mental anguish and suffering. *Chapman*, 223 B.R. at 138. Judge Squires construed the meaning of § 12-1001(h)(4) to be restricted to "actual physical bodily injury as opposed to broadening it to include mental anguish and distress." *Id*. at 140. Accordingly, Judge Squires held that the debtor's damages award could not be exempted. *Id*. at 140-41. Then, Judge Squires went on to discuss and defend *In re Dealey*, 204 B.R. 17 (Bankr.C.D.Ill. 1997), in which Judge Lessen held that an award for loss of consortium was exempt under § 12-1001(h)(4). *Id*. at 140-41. In *Dealey*, Judge Lessen had merely relied on the reasoning of other courts, but Judge Squires justified Judge Lessen's decision by explaining that one component of loss of consortium is deprivation of sexual relations—a physical bodily injury according to Judge Squires. *Id*.

This Court has two problems with Judge Squires's conclusion that loss of consortium qualifies as a personal bodily injury. First, in Illinois, consortium "consists of several elements, encompassing not only material services, including the loss of financial support from the impaired or deceased spouse but also including elements of companionship, felicity and sexual intercourse, all welded into a conceptualistic unity." *Kubian v. Alexian Bros. Medical Center*, 651 N.E.2d 231, 236 (Ill. App. 2d Dist. 1995) (internal citations and quotations omitted). Even assuming that the deprivation of sexual relations is a "bodily injury," it would be impossible for Bankruptcy Courts to determine what portion of a loss of consortium award is attributable to loss

of sexual relations as opposed to loss of companionship or loss of financial support. In this case, the Debtors did not even offer evidence to show that the payment on account of the loss of consortium was based on a deprivation of sexual relations.

Second, the deprivation of sexual relations is not encompassed by the plain and ordinary meaning of the term "personal bodily injury." This Court is not alone in its conclusion that "personal bodily injury" means physical damage to a person. Judge Lessen, Judge Squires and Judge Meyers have all concluded that the phrase "personal bodily injury" means actual physical damage to a person. As noted above, in *Chapman*, Judge Squires construed "the meaning of § 12-1001(h)(4) to be restricted to actual physical bodily injury . . . ." *Chapman*, 223 B.R. at 140. In *In re Langa*, 222 B.R. 843 (Bankr.C.D.Ill. 1998), Judge Lessen denied an exemption under § 12-1001(h)(4) for a sexual harassment damages award, stating as follows:

> [T]he legislature chose to limit the exemption by qualifying it with the term "bodily." The basis for [the debtor's] suit was not bodily injury; she did not allege any type of physical injury or impairment of physical condition. Rather, the injuries claimed by [the debtor] were psychological and emotional, and the Illinois legislature chose not to exempt these injuries.

Langa, 222 B.R. at 845.

This Court cannot reconcile the unanimous conclusion that "personal bodily injury" means physical damage to a person with the notion that "personal bodily injury" encompasses a deprivation of sexual relations. Although there does not appear to be any controlling case law directly on-point, this Court agrees with Judge Meyers that a deprivation of sexual relations does not amount to physical damage to a person.

B. The Meaning of "Of the Debtor"

The Debtors rely on the logic of *Lynn*, in which the Court concluded that the debtor was

entitled to exempt her loss of consortium award because the award "arose out of" or was "on account of" her husband's personal bodily injury. *Lynn*, 13 B.R. 361. Like Judge Meyers, this Court disagrees with the *Lynn* decision. *Lynn's* interpretation of § 12-1001(h)(4) ignores the phrase "of the debtor or an individual of whom the debtor was a dependent." The plain meaning of this phrase is that for a debtor to claim this exemption he must either (1) personally suffer a personal bodily injury, or (2) an individual of whom he is a dependent must suffer such an injury. *Accord In re Turner*, 190 B.R. 836, 841 (Bankr.S.D.Ohio 1996) (interpreting a similar statute and stating that "[f]or [the debtor] to claim this exemption she must either personally suffer an injury or an individual of whom she is a dependent must suffer the injury"). In this case, for the reasons discussed above, this Court has concluded that Mr. Owen's loss of consortium does not constitute a "personal bodily injury." Neither is Mr. Owen a dependant of Mrs. Owen.[3] Therefore, Mr. Owen is not entitled to the exemption.

If the Illinois legislature had wanted a debtor to be able to claim an exemption for an award arising out of his spouse's personal bodily injuries, the legislature could have easily so provided. Indeed, the legislature did provide that a debtor can exempt a payment made "on account of" a personal bodily injury suffered by a particular type of individual—an individual of whom the debtor is a dependent.

Moreover, if this Court were to conclude that the phrase "the debtor" encompasses both a husband and wife (so that one spouse could always get an exemption for a payment arising out of

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[3] At oral argument before this Court, the Appellants' attorney, argued for the first time that Mr. Owen is a dependant of Mrs. Owen. The Appellants expressly waived this argument before Judge Meyers, stating to the Bankruptcy Court, "Your Honor, we're not arguing here today that Mr. Owen is, in fact, dependent upon Mrs. Owen, and we never have." *Transcript of Argument Before Judge Meyers*, November 13, 2001, p. 3, lines 5-7.

the personal bodily injury of the other), then, to be consistent, this Court would have to conclude that the husband and wife (a.k.a., "the debtor") are entitled to a total exemption of $7,500.00, not $7,500.00 each.

C. Resolving Ambiguities

Generally, ambiguous bankruptcy exemption provisions should be construed in favor of the debtor. *See In re Barker*, 768 F.2d 191, 196 (7th Cir. 1985) (stating that "where an exemption statute might be interpreted either favorably or unfavorably vis-a-vis a debtor, we should interpret the statute in a manner that favors the debtor"). In this case, the terms of § 12-1001(h)(4) are clear and unambiguous. Therefore, the plain language of the statute is conclusive.

CONCLUSION

For the foregoing reasons, this Court hereby **AFFIRMS** the decision of the Bankruptcy Court.

IT IS SO ORDERED.

DATED: April _____ , 2002

J. PHIL GILBERT
U.S. District Judge